

MOTION FILED
DEC 15 1971

IN THE
Supreme Court of the United States

October Term, 1970

No. 70-283

FREDERICK E. ADAMS, Warden,
Connecticut State Prison,

Petitioner,

against

ROBERT WILLIAMS,

Respondent.

**MOTION BY THE DISTRICT ATTORNEY OF
NEW YORK COUNTY TO FILE THE
ANNEXED BRIEF-AMICUS CURIAE**

**BRIEF OF DISTRICT ATTORNEY OF NEW YORK
COUNTY, AMICUS CURIAE, IN SUPPORT OF A
PETITION FOR CERTIORARI**

FRANK S. HOGAN
District Attorney
New York County
Amicus Curiae
155 Leonard Street
New York, New York 10013
(212) 732-7300

MICHAEL R. JUVILER
HERMAN KAUFMAN
Assistant District Attorneys
Of Counsel

**Motion by the District Attorney of New York County
to File the Annexed Brief *Amicus Curiae***

Frank S. Hogan, District Attorney of New York County, respectfully moves to file the annexed brief submitted in support of the petition for certiorari to review the *en banc* ruling by the United States Court of Appeals for the Second Circuit reversing the denial of the petition for federal habeas corpus, by which the respondent sought to vacate a judgment, convicting him, after a jury trial, of the crimes of Possession of a Pistol Without a Permit, Unlawful Possession of a Weapon while Operating a Motor Vehicle, and Possession of Narcotic Drugs [Connecticut General Statutes, §§29-35, 29-38, 19-246]. The judgment was affirmed by the Supreme Court of the State of Connecticut.

The interest of *amicus* in the present case arises primarily from the fact that *amicus* is an appellant in a case presently pending in the New York Court of Appeals in which the same issue is before the court, namely, whether a policeman who, while patrolling a high crime area late at night, is alerted by an informant that a suspect, seated in a nearby automobile, is armed with a loaded revolver, may conduct a self-protective search for the weapon. See *People v. Brunk*, 66 M.2d 932 (App. Term, 1st Dept. 1971), *appeal pending*.

The ruling of the United States Court of Appeals, which limits the power of a policeman to make a self-protective search for weapons under *Terry v. Ohio*, 392 U.S. 1 (1968), in the course of controlling street crime, conflicts with

previous long-standing decisions of the New York Court of Appeals. Additionally, the ruling raises a serious question concerning the extent to which *Terry v. Ohio* is affected by the decision in *Spinelli v. United States*, 393 U.S. 410 (1969). We believe that a more complete statement of these two reasons for granting the writ—the reasons do not appear in the petition for certiorari—should be considered by this Court before it decides to review the *en banc* decision of the Court of Appeals.

Under Rule 42(4) of the Rules of this Court, *amicus*, the authorized law officer of a political subdivision of the State of New York, may file a brief in support of the petition for certiorari without obtaining the advance permission of this Court. Permission is sought in the present case, however, because, as indicated to us by the Clerk of this Court, the petition for certiorari—which is now pending—was filed in July 1971. The instant brief was not filed until today because it only recently came to the attention of this office that certiorari was being sought by the petitioner, the State's Attorney of Fairfield County, Connecticut. Consent to file the annexed brief has been obtained from counsel for the petitioner and the respondent.

Respectfully submitted,

FRANK S. HOGAN
District Attorney
 New York County

MICHAEL R. JUVILER
 HERMAN KAUFMAN
 Assistant District Attorneys
Of Counsel

TABLE OF CONTENTS

	PAGE
Introduction—Interest of <i>Amicus</i>	1
Reasons for Granting the Writ	2
Conclusion	11

TABLE OF AUTHORITIES

Cases:

Aguilar v. Texas, 378 U.S. 104 (1964)	3, 7
Chimel v. California, 395 U.S. 752 (1969)	8
Draper v. United States, 358 U.S. 307 (1959)	3, 7
Harris v. United States, 403 U.S. 573 (1971)	7, 11
Henry v. United States, 361 U.S. 98 (1959)	3
People v. Arthurs, 24 N.Y.2d 588 (1969)	4
People v. Bronk, 66 M.2d 932 (App. Term, 1st Dept. 1971)	i, 2
People v. Hendricks, 25 N.Y.2d 129 (1969)	8
People v. Rivera, 14 N.Y.2d 441 (1964)	5
People v. Taggart, 20 N.Y.2d 335 (1967)	4, 5
Sibron v. New York, 392 U.S. 40 (1968)	9
Spinelli v. United States, 393 U.S. 410 (1969)	ii, 3, 6, 7, 8, 9, 10, 11
Terry v. Ohio, 392 U.S. 1 (1968)	i, ii, 3, 4, 6, 8, 10

Statutes and Constitution:

Connecticut General Statutes:

Section 19-246	3
Section 29-35	i, 3
Section 29-38	i, 3

United States Constitution:

Fourth Amendment	3, 10
------------------------	-------

IN THE
Supreme Court of the United States

October Term, 1970

No. 70-283

FREDERICK E. ADAMS, Warden, Connecticut State Prison,
Petitioner,

against

ROBERT WILLIAMS,

Respondent.

**BRIEF OF DISTRICT ATTORNEY OF NEW YORK
COUNTY, *AMICUS CURIAE*, IN SUPPORT OF A
PETITION FOR CERTIORARI**

Introduction—Interest of *Amicus*

Amicus is the District Attorney of New York County, the authorized law officer of a political subdivision of the State of New York. *Amicus* files this brief in support of the petition for certiorari filed by the State's Attorney of Fairfield County, Connecticut, because the issue here recurs often in New York County—whether a policeman, who, while patrolling a high crime area late at night, is alerted by an informant that a suspect is armed with a pistol, may

conduct a limited search of the suspect for the weapon. In New York County—Manhattan—police officers are frequently called upon to take immediate action on the basis of on-the-street encounters with citizen informants, offering information about crimes in progress ostensibly committed in their presence. Indeed, *amicus* is currently the appellant in *People v. Bronk*, 66 Misc.2d 932 (App. Term, 1st Dept. 1971), *appeal pending*, a case in which the question raised in the present case was decided adversely to the People by the Appellate Term of the Supreme Court, First Department. In *Bronk*, leave to appeal to the Court of Appeals of New York has been granted by an associate judge of that Court, and it is expected that the appeal will be argued early in 1972.

Reasons for Granting the Writ

I

While on patrol duty alone at 2:15 a.m. in a section of Bridgeport, Connecticut, noted for its high incidence of criminal activity, Sergeant John Connolly met a person who he knew was trustworthy and reliable. The person pointed to an automobile parked across the street, telling Connolly that the occupant in the vehicle, the respondent, was carrying a pistol in his waistband and was also in possession of narcotics. Thereupon, the officer approached the automobile, and instructed the respondent to open the car door. Instead, the respondent rolled down the window of the door, and the officer then reached inside the window with his hand, removing a loaded .32 calibre revolver from the respondent's waistband. After arresting respondent for possession of a pistol without a permit, and unlawful pos-

session of a weapon while operating a motor vehicle [Connecticut General Statutes §§29-35, 29-38], Sergeant Connolly seized a machete under the front seat of the car and twenty-six glassine envelopes of heroin from the defendant's clothing and wallet. The seizure of this property resulted in a conviction from which the respondent sought habeas corpus relief.

II

Although originally affirming, by a divided court, the District Court's denial of habeas corpus, the United States Court of Appeals for the Second Circuit later ruled, six to one, in an *en banc* decision, that the introduction of the pistol and the heroin at the respondent's trial in state court was barred by the Fourth Amendment. The Court of Appeals concluded that, after speaking with his informant,

"Sergeant Connolly had neither probable cause [to arrest respondent] nor any other sufficient cause for reaching into [respondent's] waistband, an action which led to the subsequent search of [respondent's] car and the discovery of a machete and narcotics later introduced in evidence at [respondent's] trial. See *Terry v. Ohio*, 392 U.S. 1, 1968; *Spinelli v. United States*, 393 U.S. 410 (1969); *Aguilar v. Texas*, 378 U.S. 108 (1964); *Henry v. United States*, 361 U.S. 98 (1959); *Draper v. United States*, 358 U.S. 307 (1959)." (Petitioner's Appendix, pp. 1a-2a.)

The ruling of the Court of Appeals, which drastically curtails the power of the police officer to conduct a self-protected search for weapons, as previously authorized